

HIGH COURT OF MADHYA PRADESH : JABALPUR

Civil Revision No.36/2017

Ramneek Shah
-Versus-
Chandra Kumar Jain

CORAM :

Hon'ble Shri Justice Vijay Kumar Shukla

Shri Sanjay Seth, Advocate for the applicant.

Shri R.P. Agrawal, Senior Advocate with Shri Sharad Gupta and Shri Anuj Agrawal, Advocates for the non-applicant.

ORDER
(16.03.2017)

This revision-petition has been filed under Section 23-E of the M.P. Accommodation Control Act, 1961 [*hereinafter referred to as 'the Act'*] challenging the order dated 22-11-2016 passed by the Rent Controlling Authority, Jabalpur [for short 'the RCA'] in Case No.27/A-90/2015-16 whereby an application filed by the non-applicant under the provisions of Section 23-A(b) of the Act has been allowed and the applicant has been directed to handover the vacant possession of the non-residential accommodation in question after expiry of two months from the date of order. Further, the Rent Controlling Authority in exercise of power under Section 23-G(2) of the Act has directed the non-applicant to pay amount equivalent to two years rent as compensation to the applicant.

2. The facts which are necessitous for adjudication of the present revision petition, briefly stated, are that the non-applicant preferred an application under Section 23-A(b) of the Act before the RCA seeking eviction of the present applicant-tenant stating that he is the owner of the land bearing Block No.78, Plot No.58, admeasuring 780 Sq. ft., situate at Ganjipura, District Jabalpur and a house is built thereon, bearing Municipal Corporation No.208, Tularam Chowk, Jabalpur. It is pleaded that he had inherited the said property and in the ground floor thereof, there is a shop having an area $22 \times 10 = 220$ Sq.ft. which has been marked as A,B,C and D in red colour in the map attached. It is further submitted that the applicant-tenant is in occupation of the premises for a monthly rent of Rs.5000/- wherein he is carrying on the business of hardware in the name and style of "M/s Jabalpur Hardware Mart. The non-applicant submitted that he was in civil services in the Department of Water Resources of the State of M.P. and retired from the services on 13-01-2013. It was submitted that he was in *bonafide* need of the suit premises for running of his own business of construction materials viz. hardware and sanitary items etc. He further pleaded that he had no other reasonably suitable accommodation for starting the said business.

3. Per contra, the present applicant refuted the claim of the non-applicant and submitted that he was not in bonafide need for starting the said business. It was further submitted that in the same building in the ground floor adjacent to the suit premises a reasonable and suitable accommodation is available to the landlord for starting his own business. It was alleged that the non-applicant/landlord has preferred the application seeking eviction of the applicant solely with the object to let out the suit premises on a higher rent or to sell out the premises in question.

4. The learned RCA after appreciating the evidence adduced on both sides, in proper perspective, has passed the impugned order directing handing over possession of the suit premises to the non-applicant holding that the non-applicant is the landlord within the ambit and scope of Section 23-J of the Act and he was in *bonafide* need of the suit premises for starting of his own business of construction materials viz. hardware and and sanitary items etc..

5. Assailing the order passed by the learned RCA counsel appearing for the applicant submitted that the finding recorded by the RCA as regards Issue No.3 is not based on proper appreciation of pleadings and evidence brought on record and hence, the finding in that regard is arbitrary and perverse. He referred to paras 15, 16 and 17 of the cross-examination of the AW-1 to submit that there is a reasonably suitable non-residential accommodation available with the applicant. He also submitted that since the applicant suppressed these facts regarding availability of alternative suitable non-residential accommodation, therefore, he is not entitled for grant of any relief. He relied on the judgments passed by this Court in the cases of *Hakimuddin Saifi vs. Prem Narayan Barchhiha*, 1998(1) MPLJ 203 and *Ashok Kumar vs. Kishan Singh*, 2001(3) MPHT 371.

6. Combating the aforesaid submission learned senior counsel appearing for the non-applicant referred to paras 9 and 10 of the application and para 17 of the application filed in the prescribed format to contend that there is adequate pleading in regard to '*bonafide need*' of the non-applicant of the suit premises for running of his own business of construction materials viz. hardware and and sanitary items etc. and also there is specific pleading that there is no reasonably suitable non-residential accommodation of his own in his occupation

in the city of Jabalpur. Para 17 of the application filed in the prescribed format being relevant for the present purpose, is reproduced (*pleadings in the application and the prescribed format are the same*) hereunder:

“17. The applicant/landlord has retired from the Government service on 31-5-2013 from the Department of Water Resources, State of M.P.. The applicant requires the tenanted premises for his bonafide need for starting the business of construction material, sanitary iterns, plumbing etc. The applicant has no reasonably suitable non-residential accommodation of his own in his occupation in the city of Jabalpur.

The applicant/landlord is not having any other accommodation of his own for starting the aforesaid business and the tenanted premises is most suitable for the aforesaid business of the applicant, as the same is situated in the heart of the city and the area is known for the hardware and other business.”

7. Learned senior counsel for the no-applicant further submitted that there is no suppression of availability of an alternative accommodation, because whatever evidence has been referred by the applicant is in regard to the residential accommodation. He also submitted that there is pleading in regard to availability of the accommodation which is not suitable. He also referred photographs in that regard to substantiate his submission that the alternative accommodation suggested by the applicant is on the backside of the present shop and there is a small lane which is used for the purpose of

parking two wheelers. He also referred to paras 8, 9 and 11 of the DW-1 (Ramneek Shah) the present applicant to bolster his contention that he had admitted the tenancy and also the bonafide need of the applicant. He further submitted that choice of an accommodation and its suitability cannot be dictated by the tenant and it is the right of the landlord to adjudge as to which accommodation would be more suitable for him to start a business. In this regard he relied on the judgements rendered in the cases of Raghavendra Kumar vs. Firm Prem Machinery and Company, AIR 2000 SC 534; Dinesh Kumar vs. Yusuf Ali, AIR 2010 SC 2679; and Anil Bajaj and another vs. Vinod Ahuja, (2014) 15 SCC 610.

8. Having regard to the arguments advanced on behalf of the parties, it is apt to refer the provision of Section 12(1)(f) of the Act, which reads thus:

“12. Restriction on eviction of tenants – (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely -

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the

accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.”

9. From a plain reading of the aforesaid provision it is vivid that Section 12 of the Act starts with a non-obstante clause thereby curtailing the right of the landlord to seek eviction of the tenant which he might have under any other law and the right of eviction is made subject to overriding provisions of Section 12 of the Act. Thus, it is an enabling provision. In order to avail the benefit conferred by Section 12 of the Act seeking eviction of the tenant, the landlord must satisfy the necessary ingredients of the Section which are; (i) that he requires bonafide possession of a building let for non-residential purpose for continuing or starting his business; and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned. The burden to establish both the requirements of Section 12(1)(f) of the Act is undisputedly on the landlord.

10. The present case is a case of a special category of landlord which is covered in Chapter III-A which describes eviction of tenants on grounds of “bona fide” requirement. It is not in dispute that the non-applicant/landlord is a retired government servant and, therefore, he is a landlord as defined under Section 23-J(i) of the Act. Hence, the application was filed under 23-A(b) of the Act in Chapter III-A before the RCA. In cases of a landlord covered under Section 23-J of the Act procedure for deciding an application is prescribed under Section 23-D of the Act. It is reproduced hereunder:

“23-D. Procedure to be followed by Rent Controlling Authority or grant of leave to tenant to contest – (1) Where leave is granted to the tenant to contest the application, the Rent Controlling Authority shall commence the hearing of the application as early as practicable and decide the same, as far as may be, within six months of the order of granting of leave to the tenant to contest application.

(2) The Rent Controlling Authority shall, while holding an enquiry in a proceeding to which this Chapter applies, follow as far as practicable, the practice and procedure of a Court of Small Causes including the recording of evidence under the Provincial Small Cause Courts Act, 1887 (IX of 1887). The Rent Controlling Authority shall as far as possible, proceed with the hearing of the application from day today.

(3) In respect of an application by a landlord it shall be presumed, unless the contrary is proved, the requirement by the landlord with reference to clause (a) or clause (b), as the case may be, of Section 23-A is bona fide.”

In sub-section (3) of Section 23-D of the Act a presumption is attached to the requirement of the landlord with reference to clause (a) or clause (b) under Section 23-A of the Act which is specifically regarding bona fide need of the landlord.

11. Thus, facts in the present case that burden of proof is to be scanned in view of the provisions of sub-section (3) of Section 23-D of

the Act. From the pleadings in paras 9 and 10 of the application and para 17 of the application in the prescribed format, it is luminescent that the plaintiff has discharged his burden – as he made a specific pleading that he requires the shop in question for starting of his own business of construction materials viz. hardware and and sanitary items etc. and he has no other reasonably suitable accommodation. It is further corroborated by the evidence of AW-1 and the same is further corroborated by Ex.P/1, Ex.P/4 and the photograph referred by the non-applicant. On the contrary, the defendant could not discharge his onus as to rebut the presumption attached in Section 23-D of the Act. In view of paras 8 and 9 of his deposition of cross-examination, the case of the landlord stands further supported.

12. The contention of the present applicant that there was suppression on the part of the landlord regarding availability of an alternative reasonably suitable accommodation, also sans merit. In view of the pleadings made in paras 9 and 10 of the application and para 17 of the application in the prescribed format and also deposition of AW-1 there is no suppression on the part of the landlord in that regard, therefore reliance placed upon by the applicant in **Hakimuddin Saifi (supra)** and **Ashok Kumar (supra)** is misplaced.

13. As discussed above, right of choice of the landlord regarding reasonably suitable accommodation cannot be curtailed or controlled by the tenant in view of the law laid down by the Apex Court in the cases of **Raghavendra Kumar (supra); Dinesh Kumar vs. Yusuf Ali (supra); and Anil Bajaj and another vs. Vinod Ahuja (supra)**. The same view has been followed by the Apex Court in a recent decision rendered in the case of **Bhupinder Singh Bawa vs. Asha Devi, (2016) 10 SCC 209** wherein it has been held that it is perfectly open to the landlord to chose more suitable premises for

carrying out the business and the tenant cannot dictate the landlord, as to which shop would be more suitable for him to start a business.

14. In view of the aforesaid enunciation of law and facts of the case, I do not find any illegality in the impugned order passed by the learned RCA and **the revision-petition is dismissed**. There shall be no order as to costs.

(Vijay Kumar Shukla)
Judge

a c .